

STATUTORY CRIMINAL 4.09

JUSTIFICATION FOR USE OF PHYSICAL FORCE IN LAW ENFORCEMENT

A defendant was justified in using or threatening physical force in law enforcement if:

1. The defendant was [making an arrest or detention] [assisting in making an arrest or detention] [preventing the escape after arrest or detention] [assisting in preventing the escape after arrest or detention] of another person; and
2. The other person used or threatened to use physical force; and
3. A reasonable person in the situation would have believed that using or threatening physical force was immediately necessary [to effect the arrest or detention] [to prevent the escape]; and
4. [The defendant made known to the other person the purpose of the arrest or detention] [The defendant believed that the other person knew the purpose of the arrest or detention] [A reasonable person in the situation would have believed that the purpose of the arrest or detention could not reasonably be made know to the other person]; and
5. A reasonable person in the situation would have believed that the arrest or detention was lawful.

The use of physical force in law enforcement is justified only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of physical force is justified if a reasonable person in the situation would have reasonably believed that immediate physical danger appeared to be present. Actual danger is not necessary to justify the use of physical force in law enforcement.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

If evidence was presented that raises the defense of justified use of physical force in law enforcement for [insert count number and name of offense], then the State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

SOURCE: A.R.S. § 13-409 (statutory language as of October 1, 1978) and § 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995).

USE NOTE: Use the language in brackets as appropriate to the facts.

“Physical Force” is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.05 (28)).

Justification defenses under chapter 4 of A.R.S. Title 13 are not affirmative defenses for crimes occurring on or after April 24, 2006. However for crimes occurring before this date, they remain affirmative defenses. In such cases, the court shall **delete** the last paragraph of this instruction and instruct on “affirmative defense” so as to inform the jury on the correct burden of proof. “Affirmative defense” is defined in A.R.S. § 13-205 (Statutory Instruction 2.05). An affirmative defense must be shown by a preponderance of the evidence. “Preponderance of the evidence” is defined in Standard Instruction 5b(2).

COMMENT: The Arizona Supreme Court has required that an instruction under A.R.S. §§ 13-404 & –405 must include a reference to the reasonable person standard. *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995). Because A.R.S. § 13-409 requires a reasonable person standard, the direction given in *Grannis* will likely apply in those situations.

The use of a police dog to apprehend a suspect is lawful as a use of physical force. *State v. Doss*, 192 Ariz. 408, 412-13, 966 P.2d 1012, 1016-17 (App. 1998).

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